STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois, Petitioner, Rate MAP-P Modernization Action Plan – Pricing Annual Update Filing	))))))	Docket No. 16-0262

AMEREN ILLINOIS COMPANY'S VERIFIED OPPOSITION
TO IIEC AND CUB'S REQUEST FOR INTERLOCUTORY REVIEW

Under Illinois' electric formula rate law, the Commission's determinations of prudence and reasonableness are final and not subject to collateral attack. Illinois Industrial Energy Consumers (IIEC) and Citizens Utility Board (CUB) witness Michael P. Gorman filed testimony in this case that attacked 2014 Ameren Illinois Company (AIC) costs that the Commission approved as prudent and reasonable in Docket 15-0305. The Administrative Law Judge properly struck that testimony. IIEC and CUB now petition for interlocutory review, arguing that the stricken testimony is not an attack on the previously approved costs, but rather a prospective adjustment. A plain read of the stricken testimony, however, contradicts that argument, and IIEC and CUB otherwise ignore the law. So, IIEC and CUB's Petition must be denied.

BACKGROUND

Formula ratemaking provides for an annual review of the utility's actual costs from the prior calendar year. The annual review happens during the "update" proceeding to establish new charges for the next year. The utility files updated cost inputs to the formula rate, derived from its most recent FERC Form 1, with supporting testimony and schedules. The Commission examines the prudence and reasonableness of the actual costs reflected in the updated cost inputs to be recovered in rates during the following year. Once performed, that review is final: determinations of prudence and reasonableness of the costs reflected in the formula rate "shall be

final upon entry of the Commission's order and shall not be subject to reopening, reexamination or collateral attack." 220 ILCS 5/16-108.5(d)(3). This requirement is specific to formula ratemaking. And it makes sense—the purpose of the update is to examine the prudence and reasonableness of the utility's most recent actual costs, in this case 2015 costs, not to look back (again) at prior period costs already considered by the Commission and reflected in rates.

In Docket 15-0305, AIC offered testimony and quantitative analysis that supported an increase in Ameren Service Company (AMS) expenses incurred by AIC from 2013 to 2014. That evidence described the impact of Ameren Corporation's late 2013 divestiture of Ameren Energy Resources (AER) on the amount of AMS expense allocated to AIC in 2014. That evidence also identified the AMS services that contributed to the 2014 increase. The testimony and quantitative analysis were admitted into the record, and the Commission issued an order that authorized the collection of updated electric delivery service revenues that reflected the 2014 increase in AMS expenses. In entering that order, as part of the formula ratemaking, the Commission "closed the books" on its review of 2014 expenses and investment, including the 2014 increase in AMS expenses.

In this update proceeding, IIEC and CUB witness Michael Gorman's direct testimony asked the Commission to do something that it cannot do—reexamine the prudence and reasonableness of the 2014 increase in AMS expenses already reflected in the formula rate.[1] Specifically, Mr. Gorman proposed to eliminate the increase in 2014 AMS expenses that

[1] This Opposition refers to Mr. Gorman's direct testimony (IIEC/CUB Ex. 1.0) as filed on e-Docket on June 30, 2016. In that testimony, Mr. Gorman proposes three adjustments to 2015 AMS expenses: (1) an AER-related adjustment; (2) an Ameren Corporation (AMC)-related adjustment; and (3) an Ameren Transmission Company (ATXI)-related adjustment. Only the AER-related adjustment was removed by AIC's Motion to Strike. AIC has submitted rebuttal testimony opposing his two remaining adjustments as unsupported and arbitrary.

occurred after the divestiture of AER, by arbitrarily substituting 2013 AMS expenses for 2015 AMS expenses. AIC moved to strike that testimony, and the ALJ's July 21, 2016 Ruling correctly found that Mr. Gorman's proposed adjustment to 2015 AMS expenses is a prohibited "collateral attack" on the Commission's decision in Docket 15-0305.[2]

ARGUMENT

IIEC and CUB argue that the ALJ's Ruling is wrong because Mr. Gorman's direct testimony "includes only prospective adjustments," that his adjustments only seek to adjust "the levels of certain 2015 costs . . . going forward," and that this "new evidence" about the increase in 2014 AMS expenses must be considered in this proceeding. (IIEC/CUB Pet. at 1, 6.) But this attempt to recast Mr. Gorman's AER adjustment as testing the prudence and reasonableness of 2015 costs does not withstand scrutiny. Mr. Gorman's own words demonstrate that he is seeking to reverse increases from 2013 to 2014. IIEC, CUB and Mr. Gorman could have litigated the 2014 increase in AMS expenses in Docket 15-0305. They did not.[3] Their failure to address the issue in Docket 15-0305 is not a basis for allowing it in this case.

[2] The ALJ's July 21, 2016 Ruling states that the stricken portions of Mr. Gorman's testimony constitute a "collateral attack on the Commission's 2013 and 2014 proceedings." As explained in AIC's Motion and Reply, the attack is on the Commission's findings in the *2015 proceeding*, Docket 15-0305, concerning the prudence and reasonableness of *2014 costs* reflected in the formula rate.

[3] IIEC, CUB and Mr. Gorman did question the projected increase in AMS expenses allocated to AIC's gas operations in Docket 15-0142, in which AIC proposed a general increase in gas rates using a 2016 future test year. In that proceeding, which ran parallel to Docket 15-0305, AIC submitted direct and rebuttal evidence that supported the projected increase in AMS expenses from 2013 to 2016, and again included evidence that addressed the impact of the divestiture of AER on 2014 AMS expenses. IIEC and CUB chose to withdraw Mr. Gorman's adjustment, as part of a larger settlement with AIC and Staff, and the gas rates that the Commission approved, much like the current electric formula rates, reflect an increase in 2014 allocated AMS expense. Apparently, now IIEC, CUB and Mr. Gorman seek a "second [and even third] bite of the apple."

IIEC and CUB also claim that AIC wants the Commission's decision in Docket 15-0305 to be a "forever [] floor" for AMS expenses. (IIEC/CUB Pet. at 2.) This too is not correct. Staff and Intervenors have the opportunity to examine the utility's actual costs each year. That is why the formula rate update proceedings exist—to verify that the actual costs from the prior year, in this case 2015 costs, were prudently incurred and reasonable in amount. Mr. Gorman hasn't taken that opportunity here. Instead, he proposed to reverse previously approved increases and establish a "ceiling" of recovery on AMS expenses, in this case 2013 expenses. That is absurd: Mr. Gorman's approach would run directly afoul of formula ratemaking.

Because Mr. Gorman's testimony ignores the finality in annual update proceedings and asks the Commission to improperly revisit the 2014 increase in AMS expenses already reflected in the formula rate, the ALJ correctly granted AIC's Motion to Strike it. The Commission should deny the IIEC and CUB Petition, and affirm the ALJ's Ruling.

A. EIMA expressly provides for finality of the Commission's review of actual 2014 electric delivery costs that AIC currently is recovering through the formula rate.

The Energy Infrastructure Modernization Act (EIMA) authorized a new regulatory mechanism—the performance-based formula rate. The formula rate provides for recovery of the utility's actual costs of delivery service, using specified protocols and calculations whose components are updated and reviewed annually. EIMA established a defined annual process for reviewing the revenue requirement and setting rates. The formula rate must "specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in standardized manner." 220 ILCS 5/16-108.5(c). It must "be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year." *Id*. The "updated cost inputs" must be "based on final historical data reflected in the utility's most recently filed annual FERC Form 1." 220 ILCS 5/16-108.5(d). And

the Commission has the authority "to enter upon a hearing concerning the prudence and reasonableness of the costs incurred by the utility to be recovered during the applicable rate year that are reflected in the inputs to the performance-based formula rate derived from the utility's FERC Form 1." *Id*. EIMA authorized this systematic process so that the Commission could review incremental increases (or decreases) to a utility's cost of delivery service, each year.

Revisiting a past cost increase at some unspecified time in the future, as Mr. Gorman's stricken testimony proposes, undermines this mechanism. If an increase in an expense item in year two of the formula rate could be challenged in year eight, there would be no finality to the annual review of the utility's actual costs. To avoid that absurd scenario, EIMA limits the scope of the Commission's annual review—prior decisions on the prudence and reasonableness of costs incurred in a given calendar year "shall be final upon entry of the Commission's order and shall not be subject to reopening, reexamination, or collateral attack" in future proceedings. *Id*. That is why, in each update proceeding, AIC compares the expenses for the most recent calendar year with the prior year's expenses to identify and explain material increases and decreases. In Docket 15-0305, AIC's direct filing compared 2014 expenses with 2013 expenses, and explained the material changes, including the 2014 increase in AMS allocated expenses that occurred after the divestiture of AER. And in this current update proceeding, AIC's direct filing examined changes from 2014 to 2015.

IIEC and CUB claim that the ALJ's Ruling "threaten[s] the Commission's authority to review the prudence and reasonableness of a participating utility's costs for all future cases." (IIEC/CUB Pet. at 2.) They argue that "[n]ew evidence has been presented that was never previously introduced." (*Id*. at 6.) They suggest that the Commission can look again at year-to-year cost increases considered in prior proceedings, even if expressly identified and supported by

the prior record. But the General Assembly explicitly limited the scope of each update proceeding. And the page has turned on the review of AIC's 2014 costs. In Docket 15-0305, AIC's direct testimony expressly explained the basis for increased AMS costs allocated to AIC in 2014—testimony that addressed the very allegations about the divestiture of AER that Mr. Gorman now raises, untimely. The Commission approved an updated revenue requirement in Docket 15-0305 that included the increased 2014 AMS costs. If IIEC, CUB and Mr. Gorman could re-litigate 2014 cost increases already reflected in rates, if such an adjustment were permissible in formula ratemaking, then no annual cost increase ever would be settled.

B. Mr. Gorman's stricken testimony seeks to reopen, reexamine and attack the 2014 increase in AMS expenses already reflected in the formula rate.

IIEC and CUB claim that Mr. Gorman does not seek to reopen, reexamine, or collaterally attack the Commission's decision in Docket 15-0305. They argue that "decisions regarding 2013 or 2014 costs are not at issue here." (IIEC/CUB Pet. at 3.) They say that Mr. Gorman "provides no opinion on the Commission's determination of 2013 and 2014 AMS costs." (*Id.*) They state that "none of the stricken testimony argues that recovery of those costs was inappropriate in prior years." (*Id*.) Indeed, they admit that Mr. Gorman "does not comment on [the prior order] at all." (*Id*. at 5.) Thus, they contend, his adjustment cannot be a collateral attack.

The fact that Mr. Gorman is silent on the Commission's order or AIC's evidence from Docket 15-0305, however, does not make his adjustment permissible. Just because Mr. Gorman doesn't address the record in Docket 15-0305 doesn't mean that his testimony doesn't attack it. What matters is the intent of his proposal, and the effect of his adjustment. The intent of his proposal is to eliminate the 2014 increase in AMS expenses. And the effect of his adjustment would be to arbitrarily roll back and restate 2015 AMS expenses to 2013 levels. (*See, e.g.*, IIEC/CUB Ex. 1.0 at 9 (proposing to eliminate nearly $30 million in 2015 AMS costs, to reach

the 2013 cost level).) As the ALJ's Ruling correctly found, that constitutes a collateral attack on the Commission's prior order. The fact that the mechanics of his adjustment would prospectively reduce the electric revenues that AIC is authorized to collect in 2017 does not cure its illegality; it is still an impermissible collateral attack.

IIEC and CUB further claim that Mr. Gorman's testimony about the 2014 increase in AMS expenses and the divestiture of AER amounts to nothing more than passing "references" to costs and events in a previous year. (IIEC/CUB Pet. at 3.) These arguments, however, are belied by the very testimony that they are trying to prop up. The portions of Mr. Gorman's testimony at issue focus almost entirely on the increase in AMS charges to AIC from 2013 to 2014, not on any particular AMS costs or services from 2015. For example, he testifies:

- about "the increased cost charged to AIC resulting from the sale of Ameren's merchant generation business" *in 2013* (IIEC/CUB Ex. 1.0 at 4:71-73);
- that, "following the sale to Dynegy, Inc. *in 2013*, the total costs billed to the remaining Ameren affiliates increased significantly *in 2014*" (*id.* at 5:89-91 (emphasis added));
- that he has "prepared a table illustrating this increase" which begins with 2013 data (*id*. at 5:93-96);
- that, "*in 2014*, even though the Merchant Companies had been sold, the total AMS cost actually increased by over $12 million *from 2013* cost" (*id.* at 7:99-101 (emphasis added));
- that, "*in 2014*, the remaining affiliates not only absorbed the $29.6 million of cost previously charged to the merchant business, but also absorbed an additional $12.0 million of increase in total AMS cost" (*id.* at 7:104-06 (emphasis added)); and
- that "[*f*]*rom 2013 to 2014*, while AIC was experiencing a $28.2 million, or 22%, increase in AMS cost, the amount charged to Ameren Corporation was declining by $9.7 million, or 33%" (*id.* at 10:163-65 (emphasis added)).

And, again, the remedy that Mr. Gorman suggests is to reverse the 2013 to 2014 cost increase by "eliminat[ing] the $29.6 million of AMS cost previously charged to the [merchant generation

business in 2013] from the costs allocated to AIC" in 2015. (*Id.* at 9:139-41.)[4] So, his testimony does not just make passing "references" to 2013 AMS expenses; he starts from 2013 costs in an attempt to undo the Commission's previous approval of the increase in AMS charges from 2013 to 2014. The fact that his adjustment accomplishes his goal by reducing the amount of 2015 expense included in the formula rate does not mean that it isn't a collateral attack.

IIEC and CUB acknowledge that an improper "re-litigation of the prudence and reasonableness of 2013 and 2014 rates" would occur if Mr. Gorman argued that "the recovery of those costs should be reversed by deducting previous years' over-recovery in this proceeding." (IIEC/CUB Pet. at 4.) Yet, as the testimony quoted above shows, that is precisely what Mr. Gorman is trying to do—eliminate the $29.6 million of AMS cost previously charged to the merchant generation business in 2013, by removing the same amount from AIC's 2015 expenses.

C. The ALJ's Ruling does not mean that there is a "floor" on AMS charges that can never be challenged in subsequent update proceedings.

IIEC and CUB emphasize that the Commission is "obligated to examine the costs for which the utility seeks recovery and determine whether they are just and reasonable." (IIEC/CUB Pet. at 4.) AIC agrees. And an examination of the 2014 increase in AMS expenses did happen—in Docket 15-0305. In that case, AIC submitted evidence that explained the circumstances of the divestiture of AER, the effect that the sale had on AMS charges, and why AMS costs increased from 2013 to 2014. (*See Ameren Ill. Co.*, Docket 15-0305, Direct Testimony of Robert Porter, Ameren Ex. 9.0 at 7-8, 9-14 (filed Apr. 24, 2015).) AIC also

[4] Mr. Gorman also proposes to "reverse [an alleged 2013-2014 Ameren Corporation (AMC) AMS cost] shift by reflecting the Ameren Corporation AMS cost at the level experienced in 2013." (IIEC/CUBC Ex. 1.0 at 11:185-87.) Although this adjustment was not the subject of AIC's Motion to Strike, it is similarly impermissible and unsupported by analysis of 2015 AMS expenses and services.

submitted quantitative analysis that identified the factors, such as normal cost escalation and increasing business needs, that contributed to the increase. (*Id*. at 10-11; Ameren Ex. 9.1.)

IIEC and CUB argue that Mr. Gorman's testimony should be considered now because it was not presented in Docket 15-0305. This "new evidence," they say, requires a "new result." (IIEC/CUB Pet. at 6.) IIEC and CUB ignore that evidence *was* submitted to the Commission in Docket 15-0305 addressing the very issue that Mr. Gorman now wants to address here. IIEC and CUB just didn't respond to that evidence in Docket 15-0305. So their "new" evidence—Mr. Gorman's direct testimony in this case—is not so much "new," as too late. EIMA simply does not allow IIEC and CUB a second opportunity to challenge a cost where they failed to challenge it before.

IIEC and CUB also contend that EIMA does not "undermine[] the Commission's authority to review each cost for which recovery is sought in each new formula rate proceeding." (IIEC/CUB Pet. at 6.) AIC agrees. The problem with this argument is that Mr. Gorman's stricken testimony doesn't perform that review. Mr. Gorman hasn't performed *any* analysis of the individual AMS services that AIC received in 2015 or the costs that AIC paid for each service. Instead, he generally complains that the allocated AMS costs after the divestiture of AER were higher than before the sale, and seeks to substitute 2013 AMS expenses for 2015 AMS expenses.

IIEC and CUB finally suggest that the fact that "similar levels of costs were previously unchallenged" in Docket 15-0305 doesn't mean that the cost levels cannot be challenged again in this proceeding. (IIEC/CUB Pet. at 2.) The Commission's approval of similar costs from 2014 in Docket 15-0305, they contend, is not evidence that the same costs in 2015 are reasonable again. (*Id*. at 4.) But AIC hasn't made these arguments. AIC hasn't asked the Commission to decree that the 2014 AMS expenses "forever serve as a floor." (*Id*. at 2.) It hasn't asked the Commission

to "guarantee the utility's recovery of same [sic] level of cost in every subsequent rate proceeding." (*Id*. at 7.) Instead, all AIC has asked the ALJ (and now the Commission) to recognize is the finality of the review of 2014 costs in Docket 15-0305, which the ALJ's Ruling correctly did.

CONCLUSION

In this year's formula rate update proceeding, Mr. Gorman is free to examine and challenge the drivers of AIC's 2015 AMS expenses. But he isn't free to attack the prudence and reasonableness of the 2014 AMS expense level or the increase in AMS expense levels from 2013 to 2014. And he isn't free to opine on the divestiture of AER at the end of 2013, under the pretense of making an adjustment to 2015 expenses.

For the reasons stated above, the Commission should deny IIEC and CUB's Petition to reverse the ALJ's July 21, 2016 Ruling.

Dated: August 4, 2016

Respectfully submitted,

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VERIFICATION

I, Matthew R. Tomc, certify that: i) I am an attorney for Ameren Illinois Company; ii) I have read the foregoing *Ameren Illinois Company's Verified Opposition to IIEC and CUB's Request for Interlocutory Review*; iii) I am familiar with the facts stated therein; and iv) the facts are true to the best of my knowledge, information, and belief.

Matthew R. Tomc

STATE OF Missouri)
City) SS
~~COUNTY~~ OF St. Louis)

Subscribed and SWORN to before me this 4th day of August 2016.

Notary Public

BECKIE J. EAVES
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: February 21, 2018
Commission Number: 14938572

CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on August 4, 2016, I caused a copy of the foregoing *Ameren Illinois Company's Verified Opposition to IIEC and CUB's Request for Interlocutory Review* to be served by electronic mail to the individuals on the Commission's Service List for Docket 16-0262.

/s/ Albert D. Sturtevant
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